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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,516	11/10/2000	Gerald R. Koefeldt	RPC-0485-PUS	5124

7590- 05/30/2003
KONSTANTINE J. DIAMOND
4010 E. 26TH STREET
LOS ANGELES, CA 90023

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/30/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/710,516

Applicant(s)

KOEFLDA ET AL.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17, 19-21 and 23-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19-21, 23-29, 32 and 33 is/are rejected.
- 7) ☒ Claim(s) 30 and 31 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 7-13, 15, 17, 19, 25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps ('814) (Apps).

Apps discloses the crate including the divider assembly having dividers (dividing walls 116, 216) and standoff portions (formed by support areas 122 with a raised circular rib, a longitudinal rib and a transverse rib).

Claims 1-5, 7-15, 17, 19, 20, 23, 25, 26 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Gale.

Gale discloses a crate for holding a beverage container, the crate comprising a unitary bottom panel (minor flaps 21, 22 and inserts 81, 82) having an upper surface (the upper surfaces of both inserts), sidewalls (SIDE 1, SIDE 2, END 1 and END 2) and a divider assembly having a plurality of divider members (formed by portions of the upper surface of inserts 81 and 82 located outside of and extending between the major wells (91) and the upwardly extending sidewall portions of the wells) attached to the upper surface of the bottom panel and extending longitudinally and transversely in the compartment area to define at least one container receiving area for receiving the beverage container therein, the divider assembly including a plurality of low profile standoff portions (cylindrical rib 96) having a container contact surface (inside surface, outside surface or upper edge surface) spaced from corresponding divider members, the standoff portions extending inwardly into the at least one container receiving area for engaging

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the lower portion of the container to provide stability thereto and for maintaining the corresponding beverage container in a spaced relationship from the divider members.

The minor flaps 21 and 22 are secured to the inserts 81 and 82, respectively (see column 4, lines 24 and 25) and the minor flaps 21 and 22 are indirectly secured to each other by being attached to the sidewalls by fold lines 46, 47 (see column 3, lines 43-46). The bottom panel is unitary. The bottom panel and the first and second pairs of side walls form a unitary construction.

For claims 5 and 15, the insert 81 has recesses (opposite rib 98, see Fig. 7), each recess is capable of receiving a projection.

For claim 10, the container receiving area can be more than a single bottle receiving area and can include four bottle receiving areas, so four standoffs extend within at least one container receiving area.

For claim 28, the bottle 77 engages the outer side of standoff portion 96 (see Fig. 2).

Claims 27-29, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Hepp.

Hepp discloses a unitary crate for holding a beverage container, the crate comprising a unitary bottom panel (one of the bottom walls of a pocket) having an upper surface, sidewalls (12, 14, 16 and 18) and a divider assembly having a plurality of divider members (formed by portions of the crate except for the bottom wall, the sidewalls and the standoff portions 46) attached to the upper surface of the bottom panel and extending longitudinally and transversely in the compartment area to define at least one container receiving area for receiving the beverage container therein, the divider assembly including a plurality of low profile standoff portions (46)

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having a container contact surface spaced from corresponding divider members, the standoff portions extending inwardly into the at least one container receiving area for engaging the lower portion of the container to provide stability thereto and for maintaining the corresponding beverage container in a spaced relationship from the divider members.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gale in view of Apps.

Gale discloses the invention except for the projection receiving portion on the underside of the bottom and the projection on the upper surface of the lid. Apps teaches the projection receiving portion on the underside of the bottom and the projection on the upper surface of the lid. It would have been obvious to add the projection receiving portion on the underside of the bottom and the projection on the upper surface of the lid motivated by a need to stack the crates with more stability since this arrangement prevents sliding.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gale in view of Jamison.

Gale discloses the invention except for the lid lock. Jamison teaches a lid lock. It would have been obvious to lock the lid to prevent unauthorized access to the contents of the crate.

Claims 30 and 31 are objected to as being dependent upon a rejected base claim.

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Applicant's arguments filed February 25, 2003 have been fully considered but they are not persuasive. Apps ('814) and Gale are deemed to read on the invention.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

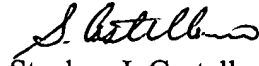
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
May 28, 2003